

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE THIRTEENTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

HE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 21219 of 1994

Between:

- 1 Mohd. Shareef S/o Mohd.Ghouse, Dhobi,
R/o Devunikunta, Asifnagar, Hyderabad
- 2 M. Ramulu, S/o Lakshmaiah, (died).
- 3 M. Raju, son of late M.Ramulu, Dhobi,
r/o.Devunikunta, Asifnagar, Hyderabad.
- 4 M. Venkatesh, son of late M.Ramulu, Dhobi,
r/o. Devunikunta, Asifnagar, Hyderabad.

(Petitioners 3 and 4 were brought on record as LR's of
deceased 2nd petitioner vide WPMP(SR).No.16960 of 2004,
dated 13-7-2004).

..... PETITIONER(S)

AND

- 1 The Collector, Hyderabad Dist., Hyderabad.
- 2 The Mandal Revenue Officer, Golconda Revenue Mandal,
Vijayanagar Colony, Hyderabad-57.
- 3 Mohd. Kasim (died)
- 4 Smt. Haji Begum, W/o.Mohd. Khasim,
R/o 2-2-173/A/1, Murad Nagar, Hyderabad.
- 5 Md. Saleem, S/o late Mohd. Khasim,
R/o 2-2-173/A/1, Murad Nagar, Hyderabad
- 6 Md. Aslam, S/o late Mohd. Khasim,

R/o 2-2-173/A/1, Murad Nagar, Hyderabad
7 Md. Inamullah, S/o late Mohd. Khasim,
R/o 2-2-173/A/1, Murad Nagar, Hyderabad.
8 Smt. Tasneem Sultana, D/o late Mohd.Khasim,
R/o 2-2-173/A/1, Murad Nagar, Hyderabad.

(R.3 is impleaded as per Court order dt.27-4-1995

in WPMP.No.2814 of 1995)

(R.4 to R.8 are brought on record as LR's of the

deceased 3rd respondent as per Court order

dt.20-6-2003 in WPMP.No.5903 of 2003)

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of mandamus or any other appropriate writ, order or direction restraining the respondents herein from demolishing the houses of the petitioners in Survey No.22/Paiki, Devunikunta, Asifnagar, Hyderabad, declaring the act of demolition of the respondents as illegal, without jurisdiction, arbitrary and violative of the legal rights of the petitioners.

Counsel for the Petitioner:MR.T.SESHAGIRI RAO, Advocate

Counsel for the Respondent Nos.1 & 2 : G.P. for Revenue.

Counsel for the Respondent No.3 : Mr.Aijaz Ahmed, Advocate.

Counsel for the Respondent No.4 to 8: MR.M.V.S.SURESH KUMAR, Advocate.

The Court made the following :

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ORDER :

The petitioners are the residents of Devunikunta, Asifnagar. They claim that the land admeasuring Acs.11-22 gts. in Survey No.22/Paiki in Asifnagar, from times

immemorial is being used as Grave yard, Devunikunta Dhobi Ghat where the houses of Dhobis were existing. The land, according to the petitioners, was assigned to one Mr.Abdul Kareem Baghdadi. The petitioners claim to be in possession of the land. Mr.Baghdadi appears to have filed a suit in 1972 against the petitioners for permanent injunction. The suit was dismissed. After the death of Mr.Baghdadi, it appears, the legal representatives also filed another suit O.S.No.2821 of 1977, which was decreed against which the petitioners filed an Appeal Suit in A.S.No.278 of 1982. It is alleged that the Appellate Court recorded a finding that the land in their possession is a Poramboke. The Cross Appeal filed by the legal heirs of Mr.Baghdadi was also disposed of in similar terms.

The petitioners allege that they and their ancestors have constructed houses and have been in occupation since long, duly paying the property tax to the Municipal Corporation of Hyderabad. According to them, the second respondent came to their houses few days prior to filing of the writ petition and made attempts to demolish the houses. Therefore, they invoked the jurisdiction of this Court under Article 226 of the Constitution of India praying for a writ of mandamus restraining the respondents from demolishing the houses in Survey No.22/Paiki of Devunikunta, Asifnagar Village.

While admitting the writ petition on 5-12-1994, this Court passed interim order to the effect that there shall be no demolition. This Court also observed that there shall not be fresh construction by the petitioners until further orders.

A counter affidavit is filed on behalf of respondents 1 and 2 opposing the writ petition. It is stated that the petitioners were never in possession of the property and that after obtaining orders from this Court on 5-12-1994 in W.P.M.P.No.26306 of 1994, petitioners raised constructions. A categorical averment is made that the land in Survey No.22/Paiki is a Government Poramboke land and the petitioners are trying to grab the land. Though the counter affidavit was filed long back, no reply affidavit is filed.

A reading of the affidavit accompanying the writ petition would show that the subject matter of the writ petition has been the subject matter of civil litigation since at least 1971. The Government, the petitioners as well as respondents 3 to 8 are claiming either title or possessory title. In a matter of this nature, it is well settled that this Court cannot decide the question of title, as it requires appreciation of evidence. If the petitioners are in possession of the land, whether as encroachers or persons with limited right of occupation, respondents 1 and 2 ought not have demolished the houses. Whether the petitioners constructed the houses prior to the interim order or after passing of the interim order is the matter, which has to be decided by the Mandal Revenue Officer after issue of notice to the petitioners.

Therefore, this writ petition is disposed of directing the second respondent to issue notice to the petitioners and take appropriate action either under the Andhra Pradesh Land Encroachment Act, 1905 or under Andhra Pradesh Land Grabbing (Prohibition) Act, 1982. If the petitioners houses are in existence in the land in dispute, there shall be *status quo* obtaining as on today. No costs.

(V.V.S.RAO, J.)

Dt.13-07-2004.

Msr.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

- 1 The Collector, Hyderabad Dist., Hyderabad.
- 2 The Mandal Revenue Officer, Golconda Revenue Mandal,
Vijayanagar Colony, Hyderabad-57.
3. 2CCs to G.P. for Revenue, High Court of A.P., Hyderabad.
4. 2CD copies.

HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No.21219 of 1994

Dt. 13-07-2004.

(Msr)